

# Upaya perlindungan merek terkenal berdasarkan Undang-Undang No 15 Tahun 2001 tentang merek : studi kasus sengketa merek Dior = Protection efforts on the well known mark in accordance to the Indonesian trademark law no 15 2001 a case study on the mark dior dispute

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## Abstrak

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Sebagai salah satu wujud karya intelektual merek memainkan peranan yang sangat penting dalam dunia perdagangan barang dan jasa serta perkembangan ekonomi secara global. Selain berfungsi sebagai tanda pengenal atas suatu produk baik barang maupun jasa yang dimiliki oleh seseorang, merek juga berfungsi sebagai pembeda antara produk barang atau jasa dari satu produsen dengan produsen lainnya. Sedemikian pentingnya arti sebuah merek sehingga menjadikannya bagian kekayaan yang sangat berharga secara komersial, yang keberadaannya lebih bernilai dibandingkan dengan aset riil sebuah perusahaan. Tidak hanya itu pentingnya peran merek dalam kehidupan pasar seringkali merek dijadikan komoditi yang sangat laku untuk diperdagangkan, sehingga memunculkan praktek pemalsuan dan peniruan yang menjurus pada persaingan curang didasari itikad tidak baik yang pada akhirnya akan berdampak kerugian tidak hanya terhadap pemilik merek tetapi juga para konsumen itu sendiri. Adapun motif dan alasannya adalah memperoleh keuntungan dalam waktu yang relatif singkat, dengan cara mendompleng ketenaran merek pihak lain yang sudah terkenal, tanpa melalui promosi yang memakan waktu lama dan biaya yang sangat besar. Mengenai merek terkenal hingga saat ini belum terdapat definisi yang jelas, baik didalam ketentuan internasional maupun nasional sehingga situasi yang demikian sering dimanfaatkan oleh para oknum pengusaha lokal dalam melakukan pelanggaran terhadap merek terkenal di Indonesia. Dari penjelasan diatas terdapat tiga hal yang mendasari tesis ini, yakni Hak-hak apa sajakan yang dimiliki oleh pemilik merek terkenal dalam hal ini Christian Dior Couture sebagai pemilik merek dagang DIOR, Upayaupaya apa yang dapat ditempuh oleh Christian Dior Couture sebagai pemilik merek terkenal terkait dengan adanya peniruan atas merek dagang DIOR, Apakah putusan hakim dalam perkara merek DIOR telah sesuai dengan Undang-undang Nomor 15 Tahun 2001 tentang Merek. Metode penelitian yang dilakukan untuk mengkaji dan menjawab permasalahan di atas adalah dengan menggunakan metode penelitian yang bersifat deskriptif analitis, sedangkan metode pendekatan penelitian dilakukan dengan menggunakan pendekatan yuridis normatif melalui library research yang meliputi sumber hukum primer, skunder dan tersier. Kemudian data-data tersebut dianalisis dengan metode kualitatif sehingga dapat ditarik kesimpulan yang bersifat deduktif induktif. Berdasarkan penelitian untuk memberikan perlindungan yang maksimal terhadap merek, khususnya merek terkenal disarankan agar dilakukan perbaikan-perbaikan terhadap Undangundang nomor 15 Tahun 2001 Tentang Merek guna efektifitas dari Undang-undang tersebut. Diperlukan upaya-upaya peningkatan pengetahuan dan integritas aparatur penegak hukum dalam

hal ini hakim pada Pengadilan Niaga, sehingga dapat lebih berhati-hati dalam memberikan pertimbangan hukum atas perkara merek yang diperiksa. Begitupun kepada aparaturnya Ditjen HKI dalam hal ini pemeriksaan merek perlu dilakukan upaya-upaya peningkatan kemampuan teknis dan integritas petugas pemeriksaan merek tersebut, tidak hanya itu yang tidak kalah penting adalah peningkatan sarana dan prasarana penunjang yang berbasis teknologi modern, guna meningkatkan kualitas sistem pemeriksaan merek sehingga terjadinya pelanggaran merek dapat diminimalisir. Kata kunci: merek, merek terkenal, itikad baik, merek jasa, senyawa merek, hukum internasional, hukum nasional.;

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<b>ABSTRACT</b><br>

As one form of intellectual work, mark plays a very important role in goods and services world trade, as well as global economic developments. In addition to functioning as the identification of a product of both goods and services of the owner, mark also function as a differentiator between the product or service from one manufacturer to the other manufacturers. The importance of mark makes it a valuable part of commercial, of which its existence is more valuable than the real assets of a company. Not only that, the importance of mark in the market life often made it become a popular commodity for trading, which at the end triggers forgery and fraud/impersonation practices that leads to unfair competition and impact not only to the owner but also to the consumers. Most motives are to gain as much benefits in a relatively short time by hijacking the well-known mark that has already been established, without having to spend more cost on the promotion. In regards to the well-known brand, until now, there has been no clear definition, both in the international and national provisions. This situation is often misused and exploited by unscrupulous local businessmen in violation of a well-known mark in Indonesia. From the above explanation, there are three things that underlie this thesis, namely: What are the rights owned by the owner of the well-known marks, in this case Christian Dior Couture as the owner of the trademark Dior?; What efforts can be reached by Christian Dior Couture as the owner of a well-known mark associated with the imitation of the trademark Dior? Is the Judge's ruling in the case of the trademark Dior has been in accordance to the Indonesian Trademark Law No. 15/2001? The research methodology in assessing and addressing the above matters is with the use of descriptive analysis and normative juridical approach through literature review which include a source of primary, secondary and tertiary law. Then the data were analyzed using qualitative methods so that it can be deduced. As the result of the research, in accordance to provide maximum protection for the well-known marks, recommendations are made to improve the Indonesian Trademark Law No. 15/2001 for the Act to become more effective. Necessary efforts are needed to improve the knowledge and integrity of law enforcement officials in this case, the judge in the Commercial Court, to be more cautious in giving legal opinions on examining marks. Likewise, the DG of Intellectual Property Rights apparatus in this case to improve the technical ability and integrity of the mark inspectors, also to improve the facilities and infrastructure based on modern technology, and to improve the quality of the brand inspection system so that violations of well-known brand can be minimized., As one form of intellectual work, mark plays a very important role in goods and services world trade, as well as global economic developments. In addition to functioning as the identification

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